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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIPS)
OF K.M., minor child, and CARL AUGUST)
MITCHELL, natural father, and AMBER)
NICOLE NEAL, natural mother,)
)
CARL AUGUST MITCHELL and)
AMBER NICOLE NEAL,)
Appellants,)
)
vs.)
)
TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee.)

No. 79A02-0605-JV-440

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0602-JT-19 and Cause No. 79D03-0602-JT-20

December 13, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellants-Respondents Carl August Mitchell (“Father”) and Amber Nicole Neal (“Mother”) separately appeal an order terminating their parental rights in K.M., upon the petition of the Appellee-Petitioner Tippecanoe County Department of Child Services (“TDCS”). We affirm.

Issues

Mother and Father separately raise the following issues:

- A. Whether the TDCS established, by clear and convincing evidence, a reasonable probability that the conditions that resulted in K.M.’s removal or the reasons for placement outside the home of the parents will not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of K.M; and
- B. Whether the trial court correctly found that the termination of parental rights was in the best interests of K.M.

Facts and Procedural History

K.M. was born on August 17, 2003. When he was born, Mother, Father, and K.M. tested positive for marijuana. Mother had also tested positive for marijuana four times prenatally. Father and Mother were initially cooperative with TDCS, and a Service Referral Agreement was started to set up services for both parents. However, Mother and Father missed two scheduled appointments for their Substance Abuse/Rapid Assessment. On September 10, 2003, TDCS filed a petition alleging that K.M. was a Child in Need of

Services (“CHINS”), and K.M. was taken into protective custody. Even though Mother and Father had not fully completed all of the recommended services, the CHINS case was dismissed at the request of TDCS on July 19, 2004.

On March 3, 2005, TDCS received a report alleging Mother was using methamphetamines and having sex with drug dealers while K.M. was present. Two days later, TDCS received another report of Mother taking drugs in front of K.M. After an investigation by TDCS and Mother testing positive for drugs, K.M. was taken into protective custody. At this time, Father was incarcerated. After holding a contested hearing on June 16, 2005, the trial court found K.M. to be a CHINS. On February 2, 2006, TDCS filed its Verified Petition to Terminate Parental Rights as to Mother and Father. The termination of parental rights hearing was held on April 20, 2006. The trial court entered its order granting the termination of parental rights on May 1, 2006. Mother and Father now appeal.

Discussion and Decision

I. Standard of Review

This court will not set aside the trial court’s judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

II. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the

termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002). The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the TDCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child

relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

III. Analysis

A. Sufficient Evidence that Conditions Would Probably Not Be Remedied

1. Mother

Mother contends that the TDCS did not present sufficient evidence to support the termination of her parental rights. Specifically, she challenges the trial court's conclusions that the TDCS established, by clear and convincing evidence, a reasonable probability that continuation of the parent-child relationship poses a threat to K.M.'s well-being and that the conditions that resulted in the child's removal will not be remedied.

We observe that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus requires the TDCS to establish by clear and convincing evidence only one of the two requirements of subparagraph (B). Termination was proper if the TDCS established that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to K.M.

The trial court concluded that TDCS proved both of these requirements. However, for our review, we only need to find that the evidence supports one of the requirements. Thus, we turn to review whether the evidence supports the finding that the conditions leading to the removal or reasons for placement outside of the home will probably not be remedied.

K.M. was removed from Mother's care due to her drug use. Another issue was Mother's co-dependency on men who use illegal drugs. Two of Mother's past boyfriends were drug dealers and her relationship with Father was centered on using drugs. Her

relationship with her drug dealer put her in the situation of using methamphetamine in front of K.M. Dr. Vanderwater-Piercy, who performed two psychological examinations of Mother, acknowledged that Mother recognized her dysfunctional pattern of attachment to men, but noted that Mother has difficulty modifying her behavior. Due to this subjugating behavioral pattern and in an effort to concentrate Mother's focus on K.M.'s needs, the trial court ordered Mother to refrain from engaging in such relationships during the pendency of the CHINS case. Mother admitted to the struggles associated with changing this behavior and admitted that she was still making the same mistakes even between the time of the Permanency Planning Hearing and the termination hearing. Despite the order to not engage in these dysfunctional relationships, Mother has rekindled her relationship with Father, in violation of the protective order she initiated against him. Mother also started a new relationship just weeks before the trial with a man from her recovery group. Despite all of the services provided to her, Mother has been unable to eliminate this behavioral pattern.

While Mother reports to have been drug free for one year at the time of the hearing, this period is minimal compared to the time Mother has been abusing drugs. Mother started using marijuana at an early age. Although Mother remained sober for about nine months after K.M. was taken away under the first CHINS case, she avoided the use of drugs for only one month after K.M. was returned to her care. Not only did Mother return to her drug use, she turned to more dangerous and addictive illegal drugs, such as methamphetamine, and greatly increased the frequency and dosage of her consumption. Furthermore, there is a corollary between her drug use and the company she keeps. As noted above, her choice of companionship coincides with her history of drug use, a history that appears destined to repeat

itself.

Finally, at the termination hearing it was clear that Mother had been dishonest with her service providers and the trial court. Mother failed to tell her counselor of her past relationships with men who were drug dealers, her high level of drug use, that she had restarted a sexual relationship with Father, and that she had started a sexual relationship with a member of her recovery group two weeks before the termination hearing. Subsequent to these revelations, Mother's counselor stated that the inconsistent statements to the different service providers appeared to be manipulative and impedes the therapeutic process. Since being in recovery, Mother testified that her only sexual relationship was with Father. After a commendable request for a recess by her attorney, Mother changed her story and admitted that she had recently started a relationship with a man from her recovery group who had been recently released from jail for a drug-related conviction. This lack of honesty further supports the finding that the conditions leading to removal will probably not be remedied, because Mother is not even willing to be honest with those who are trying to help her remedy her problems of drug use and dysfunctional high-risk relationships.

The TDCS presented sufficient evidence that the conditions leading to the removal of K.M. from Mother's care will probably not be remedied.

2. Father

Father also contends that the TDCS did not present sufficient evidence to support the termination of his parental rights. Specifically, he challenges the trial court's findings that the TDCS established, by clear and convincing evidence, a reasonable probability that continuation of the parent-child relationship poses a threat to K.M.'s well-being and that the

conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied. As above, for our review, we only need to find that the evidence supports one of these findings, and we again focus on whether the reasons for placement outside the home will probably not be remedied.

The findings relating to Father are as follows:

6. Father has an extensive criminal history including drugs and violence. In the past, Father has been physically violent with Mother and Mother has obtained a Protective Order as to Father. During the second CHINS actions, Father sent threatening letters to Mother. . . .

10. Father has a long history of criminal behavior dating back to early adolescence. He spent considerable time in juvenile facilities because of delinquent behavior. Father has criminal convictions relating to sexual misconduct with a minor (C Felony), theft of boxes of Sudafed, shoplifting, intimidation (Mother was victim), possessing a handgun without a license (C Felony), operating a vehicle without a license, resisting law enforcement, attempted acquisition of a controlled substance by misrepresentation, fraud and forgery (D felony- forging a prescription for hydrocodone). During May 2005, Father was kicked out of the Work Release program based on consuming alcohol, drug abuse and tampering with electronic equipment. Father has had petitions to revoke his probation filed against him on almost all of his criminal cases.

11. Father has a history of mental health issues. Father attempted suicide during April, 2006 by overdosing on approximately 90 pills. Father has been diagnosed with ADHD, had previous suicide attempts, ongoing depression with dysthymic disorder, panic attacks, compulsive behavior and antisocial personality traits. Father acknowledges having, "done every drug you can think of". Petitioner's Ex. 18. Father has never successfully completed a drug treatment program. Father has not been attending NA,¹ however, Father is currently participating in his individual therapy and Intensive Outpatient Program.

Appellant's Appendix at 12-14.

Father does not dispute these findings. Instead, Father contends that he has not had

sufficient time to realistically be able to remedy the reasons for K.M.'s placement outside the home. He claims that the trial court improperly decided whether to terminate his parental rights on the less than four months he was able to obtain services after he was released from jail. To support his argument, Father cites to Rowlett v. Vanderburgh County Officer of Family and Children, 841 N.E.2d 615 (Ind. Ct. App. 2006), trans. denied.

Two months after his children were taken into protective custody and before he was ordered to perform any services, Rowlett was incarcerated for dealing in methamphetamine and possession of precursors with intent to manufacture. Id. at 618. Rowlett was still incarcerated at the time his parental rights were terminated, not providing him a chance to participate in services. Id. Prior to the termination trial, Rowlett filed a motion for a continuance because he was to be released six weeks after the date set for hearing. Id. However, the trial court denied the request. Id. The Rowlett Court held that because of the positive strides Rowlett had made in turning his life around while in prison, including not using drugs while in prison, participating in a Therapeutic Community, participating in nearly 1,100 hours of individual and group services, and earning twelve hours of college credit, there was not clear and convincing evidence that the conditions which resulted in the children's removal would not be remedied. Id. at 622.

Rowlett can easily be distinguished from Father's situation. Father was incarcerated the second time K.M. was removed from Mother's care in March of 2005. Father was released to house arrest on May 16, 2005, but was rejected from the program in just a few weeks due to drinking, abusing medication, and tampering with his detention bracelet. While

¹ Narcotics Anonymous

Father was on house arrest, he was ordered to attend NA/AA meetings, complete the Wabash Valley Outpatient Services intensive outpatient program, obtain individual therapy, obtain a psychological evaluation, remain substance free, and complete all terms of house arrest. Father was given a chance to participate in these services to work towards reunification with K.M. However, he chose to revert to drug use and violate the terms of house arrest, resulting in his return to jail to serve out the rest of his sentence. While serving the rest of his sentence, Father sent Mother threatening letters and continued to use drugs. After he was released on November 11, 2005, Father waited over a month before beginning any of the services ordered by the trial court. Father has had more than four months to make improvements in his life. This is the second CHINS case, not the first as in Rowlett. Father had been provided services during the first CHINS case to assist him in improving himself. He chose not to continue that path, but chose to break the law and continue using drugs. We need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Father has had ample time to make changes, but has not done so.

Furthermore, Father has mental health issues that demonstrate Father would not be able to provide K.M. a stable environment. Dr. Vanderwater-Piercy performed two psychological evaluations of Father, one during each of the two CHINS cases. Dr. Vanderwater-Piercy diagnosed Father with dysphonic disorder, a chronic depressive disorder. He also noted that Father tends to react in a very angry and vindictive manner toward any perceived rejection. Father is currently on medication for medical issues involving anger, depression, and anxiety. Despite being on those medications, Father

attempted to kill himself in April of 2006 by overdosing on pills. This is not an environment to which a child should be subjected.

The TDCS presented sufficient evidence that the reasons for placement outside the home of Father will probably not be remedied.

B. Best Interests of the Child

Both Mother and Father challenge the trial court's finding that termination is in K.M.'s best interests. First, both parents focus on their improved interaction with K.M. during supervised visits. Secondly, they direct us to the comment by K.M.'s therapist that she could not predict how K.M. would handle the realization of being adopted.

In determining what is in the best interest of the child, the court is required to look beyond the factors identified by the TDCS and look to the totality of the evidence. In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), trans. denied. In so doing, the trial court must subordinate the interests of the parents to those of the children. Id. We have previously determined that the testimony of a child's guardian ad litem regarding the child's need for permanency supports a finding that termination is in the child's best interests. Id. The trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 202 (Ind. Ct. App. 2003).

Here the evidence establishes that the parents have a history of chronic drug abuse and a number of mental health problems. Despite extensive services offered to them since K.M. was removed, including substance abuse treatment, psychiatric evaluations, counseling, parenting classes, etcetera, the parents failed to demonstrate a change in the conditions that

necessitated K.M.'s removal or the reasons for placement outside the home. Moreover, K.M.'s CASA representative and caseworker recommended that termination of parental rights was in K.M.'s best interest because Father and Mother have carried on their manipulative relationship and not placed K.M. as their first priority. K.M.'s therapist, JoAnn Hiscox, testified that K.M. is less aggressive, playing better with his peers, more trustful of others, and is generally happier since he has been in foster care. In her latest report, Hiscox noted that K.M. still displays aggressive behaviors, but has become more positive. At that point, K.M. had been in foster care for thirteen months and had grown very attached to his foster parents. Hiscox testified that Mother and Father's intermittent, unstable relationship would not provide the stability and consistency K.M. needs. Based on the totality of the evidence, we cannot say that the trial court's finding that termination was in K.M.'s best interest was clearly erroneous.

For the foregoing reasons, we affirm the trial court's termination of Father's and Mother's parental rights to K.M.

Affirmed.

VAIDIK, J., and BARNES, J., concur.